

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

ROHAN ALEXANDER WALTERS,

Petitioner,

v.

CIVIL ACTION NO. 2:09-cv-00589
(Criminal No. 2:97-cr-00157-2)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is the petitioner Rohan Alexander Walters' request for a Writ of *Audita Querela* pursuant to 28 U.S.C. § 1651 [Docket 663].

On June 23, 2009, the Honorable Mary E. Stanley, United States Magistrate Judge, entered her proposed findings and recommendation ("PF&R") pursuant to 28 U.S.C. § 636. The magistrate judge recommends that the petition be dismissed with prejudice for failure to state a claim upon which relief can be granted. On July 9, 2009, petitioner objected.

The Magistrate Judge concluded that the petition be denied inasmuch as the requested Writ is not a suitable device for challenging a conviction or sentence if the grounds asserted therein could have been pursued under 28 U.S.C. § 2255. The Magistrate Judge is correct. As stated by our court of appeals in a recent unpublished decision, "because § 2255 exists as a vehicle for collaterally attacking a conviction or sentence, the use of an extraordinary writ [of *audita querela*] for the same purpose is inappropriate." *United States v. Aguilar*, No. 04-8015, 05-7099, 2006 WL 228699, slip op. at 1 (4th Cir. Jan 30, 2006) 164 Fed.Appx. 384, 2006 WL

228699, 1 (C.A.4 (N.C. (C.A.4 (N.C.),2006).

Petitioner's objection is thus not meritorious. Accordingly, I **ADOPT** and **INCORPORATE** the Magistrate Judge's PF&R herein and **ORDER** that the petition for a Writ of *Audita Querela* be **DENIED**. I further **ORDER** that this civil action be **DISMISSED** and stricken from the docket.

The court **DIRECTS** the Clerk to send a copy of this written opinion and order to the petitioner, all counsel of record and the United States Magistrate Judge.

ENTER: August 21, 2009


Joseph R. Goodwin, Chief Judge